

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT SHORTY AVERY,

Plaintiff,

v.

DAVITA DIALYSIS CENTER et al.,

Defendants.

Case No. 16-cv-07061-JD


**ORDER OF DISMISSAL**

In a prior order, the Court dismissed pro se plaintiff Robert Avery's complaint with leave to amend because it did not state a plausible federal claim. Dkt. No. 23. The deadline to file an amended complaint was October 20, 2017. *Id.* No amended complaint was filed, and nothing has happened in this case in over two years. On January 24, 2020, the Court issued an order for Avery to show cause why the case should not be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute. Dkt. No. 24. The deadline for a response was February 7, 2020. *Id.* No response has been filed.

Avery appears to have abandoned the case. While the Court favors the disposition of cases on the merits, it has considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and finds that dismissal here is warranted by the circumstances. The case is dismissed without prejudice under Rule 41(b), and the file will be closed.

**IT IS SO ORDERED.**

Dated: February 18, 2020

  
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JAMES DONATO  
United States District Judge